

AMENDED IN ASSEMBLY JUNE 4, 2003  
AMENDED IN SENATE MARCH 19, 2003  
AMENDED IN SENATE FEBRUARY 13, 2003

**SENATE BILL**

**No. 41**

**Introduced by Senator Bowen**

January 6, 2003

---

---

~~An act to amend Section 10515 of, and to add Article 2.5 (commencing with Section 10510.4) to Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.~~  
*An act to amend Sections 10412, 10430, 10515, and 10518 of, and to add Article 2.5 (commencing with Section 10510.4) to Chapter 2.1 of, and to add Article 7.8 (commencing with Section 10830) to Chapter 2.5 of, Part 2 of Division 2 of, the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 41, as amended, Bowen. Public contracts: services.

*(1) Existing law requires that every contractor who enters into a contract with the state or the University of California for \$10,000 or more be assigned an identification number by the Department of General Services or the university, and requires that if the contractor is a corporation or firm, the president's assigned number be used exclusively on each contract.*

*This bill would provide that a state agency may assign the identification number in addition to the department, with the department's authorization, which the department shall only give if the department is able to centrally track all identification numbers, and*

*apply that provision to transactions regulating the acquisition of information technology goods and services.*

*This bill would require each university campus to assign the identification numbers to contractors with whom the campus contracts, instead of all campuses using numbers assigned by the Regents of the University of California, provided that the regents are able to track all identification numbers centrally.*

*This bill would also clarify the ‘president’s assigned number’ to mean the number assigned by the department or an authorized state agency, in the case of contracts with the state, and the number assigned by the chancellor of a University of California campus, in the case of contracts with the university.*

**Existing**

(2) *Existing law* requires that state or local government selection for the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms be on the basis of demonstrated competence and professional qualifications, rather than competitive bidding, and imposes requirements for the implementation of this method of selection.

This bill would subject the University of California’s selection for the professional services of any of those firms to the same requirements.

**Existing**

(3) *Existing law* prohibits persons, firms, or their subsidiaries who are awarded state contracts for consulting services from submitting a bid or being awarded a contract on or after January 1, 2003, for any action related to the end product of the consulting services contract.

This bill would change that date to July 1, 2003. This bill would also specify that those provisions do not apply to consulting services contracts that comply with the requirements for the selection of professional services firms, as provided.

(4) *Existing law* includes various prohibitions with respect to conflicts of interest of persons who are awarded state contracts or contracts with the University of California, or officers or employees of the state or the university who are contracting with the state or university either directly or through other entities.

*This bill would additionally require the California State University to comply with those prohibitions.*

This bill would declare that it is to take effect immediately as an urgency statute.



Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. *Section 10412 of the Public Contract Code is amended to read:*

10412. (a) Each contractor who enters into a state contract with the state for ten thousand dollars (\$10,000) or more, shall be assigned an identification number by the department, *or a state agency, if the department authorizes the agency to assign the number*. Each contractor who has been assigned a number, shall list it on each contract ~~he or she~~ *the contractor* enters into with the state, regardless of the amount of the contract. In the case of a corporation or firm, the ~~president's assigned~~ *number assigned by the department, or a state agency, if the department authorizes the agency to assign the number*, shall be used exclusively on each contract. The assigned number shall remain unchanged regardless of future name changes.

(b) *The department shall authorize an agency to assign a contractor's identification number only if the department is able to centrally track all identification numbers.*

SEC. 2. *Section 10430 of the Public Contract Code, as amended by Section 1 of Chapter 1122 of the Statutes of 2002, is amended to read:*

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California and the Trustees of the California State University, except that Section 10365.5, Article 8 (commencing with Section 10410), and Article 9 (commencing with Section 10420) shall apply to the Trustees of the California State University.

(b) (1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, ~~and~~ 10411, *and 10412* shall apply to all transactions under that chapter.

(2) Notwithstanding paragraph (1), Section 10365.5 shall not apply to incidental advice or suggestions made outside of the scope of a consulting services contract.

(c) Except as otherwise provided in this chapter, any entity exempted from Section 10295. However, the Board of Governors

1 of the California Community Colleges shall be governed by this  
2 chapter, except as provided in Sections 10295, 10335, and 10389.

3 (d) Transactions covered under Chapter 10 (commencing with  
4 Section 4525) of Division 5 of Title 1 of the Government Code.

5 (e) Except as provided for in subdivision (c), members of  
6 boards or commissions who receive no payment other than  
7 payment for each meeting of the board or commission, payment  
8 for preparatory time, and payment for per diem.

9 (f) The emergency purchase of protective vests for correctional  
10 peace officers whose duties require routine contact with state  
11 prison inmates. This subdivision shall remain operative only until  
12 January 1, 1987.

13 (g) Spouses of state officers or employees and individuals and  
14 entities that employ spouses of state officers and employees, that  
15 are vendored to provide services to regional center clients pursuant  
16 to Section 4648 of the Welfare and Institutions Code if the vendor  
17 of services, in that capacity, does not receive any material financial  
18 benefit, distinguishable from the benefit to the public generally,  
19 from any governmental decision made by the state officer or  
20 employee.

21 *SEC. 3.* Article 2.5 (commencing with Section 10510.4) is  
22 added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract  
23 Code, to read:

24  
25 Article 2.5. Contracts with Private Architects, Engineering,  
26 Environmental, Land Surveying, and Construction Project  
27 Management Firms  
28

29 10510.4. For purposes of this article, the following  
30 definitions apply:

31 (a) “Firm” means any individual, firm, partnership,  
32 corporation, association, or other legal entity permitted by law to  
33 practice the profession of architecture, landscape architecture,  
34 engineering, environmental services, land surveying, or  
35 construction project management.

36 (b) “Architectural, landscape architectural, engineering,  
37 environmental, and land surveying services” includes those  
38 professional services of an architectural, landscape architectural,  
39 engineering, environmental, or land surveying nature as well as



1 incidental services that members of these professions and their  
2 employees may logically or justifiably perform.

3 (c) “Construction project management” means those services  
4 provided by a licensed architect, registered engineer, or licensed  
5 general contractor that meet the requirements of Section 10510.9  
6 for management and supervision of work performed on university  
7 construction projects.

8 (d) “Environmental services” means those services performed  
9 in connection with project development and permit processing in  
10 order to comply with federal and state environmental laws.  
11 “Environmental services” also includes the processing and  
12 awarding of claims pursuant to Chapter 6.75 (commencing with  
13 Section 25299.10) of Division 20 of the Health and Safety Code.

14 10510.5. (a) Selection by the University of California for  
15 professional services of private architectural, landscape  
16 architectural, engineering, environmental, land surveying, or  
17 construction project management firms shall be on the basis of  
18 demonstrated competence and on the professional qualifications  
19 necessary for the satisfactory performance of the services  
20 required. In order to implement this method of selection, the  
21 university shall adopt procedures that assure that these services are  
22 engaged on the basis of demonstrated competence and  
23 qualifications for the types of services to be performed and at fair  
24 and reasonable prices to the university. Furthermore, these  
25 procedures shall assure maximum participation of small business  
26 firms, as defined by the Director of General Services pursuant to  
27 Section 14837 of the Government Code.

28 (b) These procedures shall specifically prohibit practices that  
29 might result in unlawful activity including, but not limited to,  
30 rebates, kickbacks, or other unlawful consideration, and shall  
31 specifically prohibit university employees from participating in  
32 the selection process when those employees have a relationship  
33 with a person or business entity seeking a contract under this  
34 section.

35 10510.6. (a) The University of California shall follow this  
36 section in negotiating fees and executing a contract for  
37 professional consulting services of a private architectural,  
38 engineering, land surveying, environmental, or construction  
39 project management firm.

(b) After providing notification to the successful firm of its selection, the university shall provide written instructions for the negotiations that are to follow. These instructions shall provide the private consulting firm with necessary information that shall allow the negotiations to proceed in an orderly fashion. Negotiations shall begin within 14 days after the successful firm has been notified of its selection or upon receipt of the cost proposal. The contractor should be notified if additional time is necessary to begin negotiations.

(c) Upon the completion of negotiations, the university and the private firm shall proceed to execute a contract that the university shall complete within 45 days. The contractor should be notified if additional time is necessary to complete the contract. The university and private firm shall work together to ensure the successful delivery of the requested services in a timely fashion.

(d) In the event an impasse is reached in negotiations, the university may terminate negotiations and enter into negotiations with the next qualified firm, in the same manner as prescribed in Section 10510.8 with respect to management services contracts.

10510.7. (a) In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the university shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(b) (1) Statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the university through publications of the respective professional societies. The university, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the university, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by the university, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(2) These procedures shall specifically prohibit practices that might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit university employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section.

10510.8. (a) The university shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation that the university determines is fair and reasonable to the University of California.

(b) Should the university be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the university determines to be fair and reasonable to the University of California, negotiations with that firm shall be formally terminated. The university shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the university shall terminate negotiations. The university shall then undertake negotiations with the third most qualified firm.

(c) Should the university be unable to negotiate a satisfactory contract with any of the selected firms, the university shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this article until an agreement is reached.

10510.9. Any individual or firm proposing to provide construction project management services pursuant to this article shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

~~SEC. 2.~~

SEC. 4. Section 10515 of the Public Contract Code is amended to read:

10515. (a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract on or after July 1, 2003, for the provision



1 of services, procurement of goods or supplies, or any other related  
2 action that is required, suggested, or otherwise deemed  
3 appropriate in the end product of the consulting services contract.

4 (b) Subdivision (a) does not apply to either of the following:

5 (1) Any person, firm, or subsidiary thereof who is awarded a  
6 subcontract of a consulting services contract that amounts to no  
7 more than 10 percent of the total monetary value of the consulting  
8 services contract.

9 (2) Consulting services contracts that comply with Article 2.5  
10 (commencing with Section 10510.4).

11 ~~SEC. 3.—~~

12 *SEC. 5. Section 10518 of the Public Contract Code is*  
13 *amended to read:*

14 10518. ~~Each~~ (a) *Except as otherwise provided in subdivision*  
15 *(b), each contractor who enters into a contract with the a*  
16 *University of California campus for ten thousand dollars*  
17 *(\$10,000) or more, shall be assigned an identification number by*  
18 *the chancellor of that university campus. Each contractor who has*  
19 *been assigned a number shall list it on each contract he or she the*  
20 *contractor enters into with the university campus, regardless of the*  
21 *amount of the contract. In the case of a corporation or firm, the*  
22 *president's chancellor's assigned number shall be used*  
23 *exclusively on each contract with that particular chancellor's*  
24 *campus. The assigned number shall remain unchanged regardless*  
25 *of future name changes.*

26 (b) *If the identification numbers cannot be tracked centrally by*  
27 *the Regents of the University of California, then the regents, and*  
28 *not the chancellors, shall assign the identification numbers.*

29 *SEC. 6. Article 7.8 (commencing with Section 10830) is*  
30 *added to Chapter 2.5 of Part 2 of Division 2 of the Public Contract*  
31 *Code, to read:*

32  
33 *Article 7.8. Conflict of Interest*  
34

35 10830. (a) *No person, firm, or subsidiary thereof who has*  
36 *been awarded a consulting services contract may submit a or be*  
37 *awarded a contract on or after July 1, 2003, for the provision of*  
38 *services, the procurement of goods or supplies, or any other related*  
39 *action that is required, suggested, or otherwise deemed*  
40 *appropriate in the end product of the consulting services contract.*



1     (b) Subdivision (a) does not apply to any person, firm, or  
2     subsidiary thereof who is awarded a subcontract of a consulting  
3     services contract that amounts to no more than 10 percent of the  
4     total monetary value of the consulting services contract.

5     10831. No officer or employee of the California State  
6     University shall engage in any employment, activity, or enterprise  
7     for which the officer or employee receives compensation or in  
8     which the officer or employee has a financial interest if that  
9     employment, activity, or enterprise is sponsored or funded, or  
10    sponsored and funded, by any California State University  
11    department through or by a California State University contract  
12    unless the employment, activity, or enterprise is within the course  
13    and scope of the officer's or employee's regular California State  
14    University employment. No officer or employee in the California  
15    State University shall contract on his or her own individual behalf  
16    as an independent contractor with any California State University  
17    department to provide services or goods. This section shall not  
18    apply to officers or employees of the California State University  
19    with teaching or research responsibilities.

20    10832. (a) No retired, dismissed, separated, or formerly  
21    employed person of the California State University employed with  
22    the California State University or otherwise appointed to serve in  
23    the California State University may enter into a contract in which  
24    he or she engaged in any of the negotiations, transactions,  
25    planning, arrangements, or any part of the decisionmaking  
26    process relevant to the contract while employed in any capacity by  
27    any California State University department. The prohibition of this  
28    subdivision shall apply to a person only during the two-year period  
29    beginning on the date the person left California State University  
30    employment.

31    (b) For a period of 12 months following the date of his or her  
32    retirement, dismissal, or separation from the California State  
33    University, no person employed in the California State University  
34    or otherwise appointed to serve in the California State University  
35    may enter into a contract with any California State University  
36    department, if he or she was employed by that department in a  
37    policymaking position in the same general subject area as the  
38    proposed contract within the 12-month period prior to his or her  
39    retirement, dismissal, or separation. The prohibition of this  
40    subdivision shall not apply to a contract requiring the person's

1 *services as an expert witness in a civil case or to a contract for the*  
2 *continuation of an attorney's services on a matter he or she was*  
3 *involved with prior to leaving the California State University.*

4 *(c) This section does not prohibit the rehire or reappointment*  
5 *of California State University employees after retirement,*  
6 *consistent with California State University administrative*  
7 *policies, nor does it apply to inventors and authors of intellectual*  
8 *property licensed under technology transfer agreements.*

9 10833. *(a) Except as otherwise provided in subdivision (b),*  
10 *each contractor who enters into a contract with a California State*  
11 *University campus for ten thousand dollars (\$10,000) or more*  
12 *shall be assigned an identification number by the president of that*  
13 *California State University campus. Each contractor who has*  
14 *been assigned a number shall list it on each contract the contractor*  
15 *enters into with the California State University campus, regardless*  
16 *of the amount of the contract. In the case of a corporation or firm,*  
17 *the president's assigned number shall be used exclusively on each*  
18 *contract with that president's campus. The assigned number shall*  
19 *remain unchanged regardless of future name changes.*

20 *(b) If the identification numbers cannot be tracked centrally by*  
21 *the Trustees of the California State University, then the trustees,*  
22 *and not the presidents, shall assign the identification numbers.*

23 SEC. 7. This act is an urgency statute necessary for the  
24 immediate preservation of the public peace, health, or safety  
25 within the meaning of Article IV of the Constitution and shall go  
26 into immediate effect. The facts constituting the necessity are:

27 In order to conform the threshold date specified in Section  
28 10515 of the Public Contract Code to the operative date of that  
29 section, and thereby avoid any potential problems resulting from  
30 the unintended retroactive application of the statute, it is necessary  
31 that this act take effect immediately as an urgency statute.